IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3865 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MINOR NIKUNJGIRI MANHARGIRI GOSWAMI THROUGH MOTHER

Versus

DHIRUBHAI DAHYABHAI PATEL

Appearance:

MR MB GANDHI for Petitioners

MR GR SHAIKH for Respondent No. 1

Mr.A.J.Desai, learned A.G.P.for Respondent No. 2

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 10/07/2000

ORAL JUDGEMENT

1. This petition relates to the Public Trust registered under the Bombay Public Trusts Act known as Dhanushdhari Mata Trust, registered at Ahmedabad. The reference may be made to the Scheme which was framed on

1.9.1965, the copy of which has been enclosed with the petition as Annexure 'B'. This Special Civil Application is directed against the order dated 5.5.99 passed by the Charity Commissioner in an Application under S.41A of the Bombay Public Trusts Act, as had been moved by the petitioner No.2 Shardaben herein. There is no dispute that five Trustees of the aforesaid Trust were :-

1. Shri Champagar Shivgar Goswami
2. Shri Narmadagar Shivgar Goswami
3. Bai Jadav, widow of Revagar Chhagangar
4. Shri Dahyabhai Vithalbhai Patel
5. Shri Ramanbhai Jamnadas Modi

2. It is the case of the petitioners that none of the aforesaid Trustees are alive and in place of Trustee Shri Dahyabhai Vithalbhai Patel, respondent No.1 i.e. Shri Dhirubhai Dahyabhai Patel stepped into as the Trustee, who has been solely managing the Trust. So far as the present petitioners are concerned, namely, Minor Nikunjgiri Manhargiri Goswami, who was a minor at the time of filing the petition and who is now said to have become major and the petitioner No.2 i.e. Shardaben, wife of Manhargiri Laxmangiri Goswami claim that they had been doing Seva Pooja on the basis of the will made in favour of Nikunjgiri Manhargiri Goswami by Smt. Sita i.e. widow of Champagar, who was one of the Trustees. It is not in dispute that Sita, widow of Champagar, had made this will with regard to the rights of the Seva Pooja in favour of her nephew i.e. son of Manhargiri. Learned counsel for the petitioners has submitted that in terms of sub-Para 2 of Para 24 of the Scheme, which was framed in the year 1965, Champagar was to get Rs.400/-per annum against maintenance and after his death his heirs would get this amount of maintenance subject to the condition of their getting the right of Seva Pooja and the Turn (Vara). In the facts of the present case, the claim of the petitioners is based on the will made by Sitaben i.e. widow of Champagar in favour of minor Nikunjgiri and it is stated that they were doing Seva Pooja. Smt. Shardaben i.e. Bhabhi (brother's wife) of Sitaben and mother of Nikunjgiri (nephew of Sitaben) moved an application under S.41A before the Charity Commissioner seeking appropriate directions for the management of the Trust and for claiming rights on the basis that for the purpose of the Trust, there must be at least 3 Trustees and the Trust could not be left to be managed by sole Trustee i.e. respondent No.1 Dhirubhai Dahyabhai Patel. The Charity Commissioner has decided this Application moved by the petitioner No.2-- Shardaben under Sec.41A by his order dated 5.5.99, which is the

subject matter of challenge in this Special Civil Application. Mr. Gandhi, learned counsel for the petitioners, has submitted that the Charity Commissioner had no right to give directions with regard to appointment of other Trustees and for getting the Seva Pooja and the other directions, as had been given in the impugned order nor could he set aside the initial order dt.16.8.96, which had been earlier passed in their favour in these proceedings under S.41A initiated by them.

3. Mr. Shaikh appearing on behalf of respondent No.1 has argued that the petitioners had no locus standi whatsoever either for making the Application under Sec.41A or for filing the present petition challenging the order passed by the Charity Commissioner. He has made a pointed reference to the contents of para 8 of his reply dated 28.3.2000 and has also submitted that the petitioners have already enjoyed the benefits of the order dated 16.8.96 and taken undue advantage on the basis of this order, had not deposited even a single Paise in the Temple although heavy amount had been collected. Under the Scheme of 1965 - Para 24(2) Champagar himself was under and obligation to deposit all collections in the trust and was to get nothing except Rs.400/- per annum against maintenance. His widow Sitaben could not pass on any rights through Will in favour of her own nephew. The petitioners, who have come into picture only by will of Champagar's widow Sitaben have also been collecting gifts and donations from the devotees whereas they had no right whatsoever and Champagar's widow, namely, Sitaben had no right whatsoever to pass on any rights of Seva Pooja etc. relating to this Trust in favour of her nephew through the Will. Besides this, Charity Commissioner is within his jurisdiction to issue appropriate directions under S.41A of the Bombay Public Trusts Act for the proper administration of the income of the Trust. In any case, the petitioners have no locus standi in the matter.

4. I have heard learned counsel for the petitioners and the respondent No.1 as also learned A.G.P. Mr. A.J.Desai and I find that the Charity Commissioner in Para 17 of his order has rightly observed that it was not established as to in what capacity the Application under S.41A could be moved by said Shardaben (Guardian of Nikunjgiri). Neither she was a Trustee nor she had any probate from the Civil Court in her favour that she had a right to do the Seva Pooja. In fact the Charity Commissioner has rightly said that he has no authority for protection or enforcement of any civil rights claimed on the basis of a Will. The Charity Commissioner has

further considered the question that whether Nikunjgiri and his guardian Shardaben had any right to take the entire income of the Temple on the basis of their alleged claim as Poojari. The Charity Commissioner, having made reference to the Scheme, which had been framed in the year 1965 and having gone through the contents thereof has come to the conclusion that by no means the petitioners could be said to be the Poojaries and that in fact the Scheme had been violated by them and had they yet moved several Applications and had claimed that they were the Poojaries and that the other side be restrained under S.41A of the Bombay Public Trusts Act from interfering with their rights. The Charity Commissioner referred to the amount of Rs.400/- per annum to be received as maintenance in terms of the Scheme as had been framed in the year 1965 subject to the fulfillment of the conditions mentioned therein and has found that the order, as had been passed on 16.8.96 earlier was wrong. He has, therefore, set aside the same. He has also stated that the other side i.e. respondent No.1, who was working as a Trustee, could take the services of any other person for Seva Pooja and may place the donation Boxes fixed in the Temple in conspicuous manner with big size block letters on them that they were meant for donations and in the interest of the Trust such boxes are to be opened in the presence of the Sarpanch of the Panchayat and the Talati between 1st and 10th of every month and the amount may be deposited in the account of the Trust and the accounts with regard to the expenses be maintained.

5. Having gone through the order, as aforesaid, I find that the Charity Commissioner has rightly rejected the claim of the petitioners and the directions as have been issued by him could be issued under Sec.41A of the Act and such directions are certainly in the interest of the Trust for proper administration of the income and affairs of the Trust and the Temple. The order passed by the Charity Commissioner does not suffer from any error either of fact or of law and I find that this Special Civil Application has no force. The same is hereby rejected. The rule is hereby discharged. Ex parte ad interim order passed on 26.5.99 and which was continued later on stands vacated. No order as to costs.

(M.R.Calla,J)